

Policy Statement: Public Service Pensions and Judicial Offices Bill – Part 2: Pensions and Banking (Special Provisions) Act 2008 Bodies

This note sets out HMT's approach to Part 2 of the Bill, relating to bodies covered under the Pensions and Banking (Special Provision) Act 2008, and the legal implementation of this policy in the Bill.

Background:

The Public Service Pensions and Judicial Offices Bill ("the Bill") provides for the establishment of new public pension schemes for the beneficiaries of the Bradford and Bingley Staff (BBS) Pension Scheme and the NRAM Pension Scheme.

These two schemes meet the payment of pension and benefit entitlements of former staff members of Bradford & Bingley (B&B) and Northern Rock, two banks which were taken into public ownership to protect economic and financial stability during the 2007-2008 financial crisis. The schemes currently reside under UK Asset Resolution (UKAR), the wholly government-owned holding company established in 2010 with the purpose of holding the government's remaining interests in B&B and Northern Rock.

UKAR has gradually been returning the assets of B&B and Northern Rock acquired in 2008 to the private sector, and announced the final sale to achieve this in February 2021. Following the disposal of these assets UKAR remains responsible for a number of 'legacy' liabilities in relation to the two banks, including the BBS and NRAM pension schemes. The Government is now seeking to relieve UKAR of these remaining liabilities, allowing for UKAR to be wound down and the taxpayer relieved of its funding costs. This represents the most efficient and value for money way for the Government to manage these remaining liabilities resulting from this necessary intervention in the financial sector.

The Government intends to create new central government pension schemes for the members of the BBS and NRAM schemes, and to dispose of the assets held by the current schemes. This policy was announced at the 2020 Budget. The new schemes will reside in central Government, with Ministers ultimately responsible for the schemes.

A small number of members of the BBS and NRAM schemes also receive additional, contractual payments directly from B&B plc and NRAM Limited in addition to benefits from the formal BBS and NRAM schemes. The liability for these pensions will novate to UKAR (in October 2021), when B&B and NRAM return to private ownership. When the new schemes are established, the liability for these payments will also transfer to central Government.

The Bill includes provision to prevent the members of the current schemes experiencing adverse treatment as a result of the transfer. The Government will ensure that the provision for qualifying accrued rights in the new public schemes will be materially as good as under the current schemes (as appropriate) as immediately before this time. The Government will also ensure that the transfer is tax-neutral for members and for the schemes (and their survivors).

Clause 93: Establishment of new public scheme and transfer of rights

Policy intent:

Following the passage of the Bill, the Treasury will make regulations to establish new public schemes to provide for the pensions of, and in respect of, people who are, or have been, members of the BBS Pension Scheme or the NRAM Pension Scheme. In addition to members of the BBS and NRAM schemes, the new schemes will also provide for the benefits of other persons who may be entitled to benefits under these schemes: for example, spouses or civil partners of scheme members who may be entitled to benefits upon the member's death.

The regulations will transfer qualifying accrued rights to pensions or other benefits from the BBS and NRAM pension schemes to the new public schemes.

The Trustees of the BBS and NRAM schemes will be discharged of any liabilities in respect of the qualifying accrued rights that are transferred to the new public schemes.

Legal implementation:

The new public schemes will be established via regulations made under Clause 93(1). These regulations will set out the scheme rules. The complex and technical nature of scheme rules necessitates their consideration as part of a statutory instrument, rather than being placed on the face of the Bill. Comprehensively outlining the scheme rules on the face of the Bill would significantly increase the length and complexity of this Bill. Moreover, establishing the new schemes via regulations will enable any necessary changes to the scheme rules to be made without the need for new primary legislation.

Clause 93(1) allows the regulations establishing the new schemes to provide for the payment of pensions and benefits to or in respect of members of the BBS Pension Scheme and the NRAM Pension Scheme.

Clause 93(2) confers a power on the Treasury to make regulations transferring qualifying accrued rights from the BBS Pension Scheme and the NRAM Pension Scheme to the new schemes. The power to transfer accrued rights may be exercised without any requirement to obtain the approval or consent of anyone. Clause 93(4) enables the Treasury to describe or specify in regulations the qualifying time for the transfer of benefits from the BBS and NRAM schemes to new public schemes.

Clause 93(3) enables the Treasury to make regulations that discharge the Trustees of those schemes of their liabilities in respect of the qualifying accrued rights which are transferred to the new scheme.

Clause 94: New public schemes: further provision

Policy intent:

The Bill allows for the new public schemes to provide for both defined benefit pensions and money purchase benefits.

Some pensions and benefits under the BBS and NRAM schemes are administered on a contracted-out basis. The new public schemes may also include contracted-out pensions.

The Bill enables the payment of pensions to be administered on an outsourced basis.

After the new schemes are established, the Government will be permitted to make changes to the scheme rules retrospectively. This is typical in public service pensions schemes. For example, it may be necessary to adjust schemes to accommodate changes in law or where the Government does not want to delay the benefit of a particular change but needs time to consider the consequences and method of making the change.

Legal implementation/outline of proposed content:

Clause 94(1) allows new public schemes established under Clause 93 to provide for:

- The payment of defined benefit pensions, defined contribution pensions or both. This will allow the Treasury to establish new public schemes to meet both defined benefit and defined contribution entitlements;
- The payment and receipt of transfer values. This will allow for the Treasury to provide, in regulations, for transfers into and out of the new public schemes;
- Increasing the benefits paid under the new schemes.

Clause 94(2)(a) and (b) enables the Treasury to provide for the new scheme to be treated as a contracted-out scheme for the purposes of any enactment that provides for contracted-out pensions within the meaning of Part 3 of the Pensions Act 1993. This will allow for the transfer of any pensions which are contracted-out under the BBS and NRAM pension schemes to transfer to the new public schemes. It will also ensure that the legislation on contracting-out continues to apply to those who had contracted-out benefits under the BBS Pension Scheme and the NRAM Pension Scheme.

Clause 94(3) provides that regulations under Clause 93(1) amending a new public scheme may have retrospective effect. Regulations that have retrospective effect will be subject to the affirmative procedure under Clause 101(3)(b).

Clause 94(4) enables the Treasury to delegate the administration of new public schemes established under Part 2 to another person. Clause 94(4) also provides that persons conferred such functions upon them by the Treasury may exercise discretion, enabling the person administering the scheme to make their own decisions within a framework set by scheme regulations.

The new scheme will not fall within the existing definition of 'occupational pension scheme' under section 1(1) of the Pension Schemes Act 1993, as it will not have been established by an employer for its employees. As a result, pensions legislation would not apply to the new scheme in the same way as it applies to occupational pension schemes. Clause 94(2)(a) addresses this issue and regulations to be made may provide that the new scheme be treated as an 'occupational pension scheme' for the purpose of any legislation specified in the regulations.

Clause 95: Protection against adverse treatment: transfer of rights

Policy intent:

The members of the BBS and NRAM pensions schemes will, in all material respects, be no worse off following the transfer of their benefits to the new public schemes.

The provision in the new public schemes for the qualifying accrued rights will be, immediately after those rights are transferred, materially at least as good as they were under the BBS or NRAM pension scheme (as appropriate) immediately before this time.

The money purchase benefits which are not in payment will be at least equivalent to the value of their money purchase benefits under the BBS or NRAM pension scheme (as appropriate) before the transfer. Beyond this point, the value of any money purchase benefit pensions will be determined by the value of the underlying investments on which they are based.

Legal implementation:

Clause 95 sets out the requirements that must be met to ensure members' benefits are at least as good following the transfer. Clause 95(1) and (2) provide that so far as is relevant to qualifying accrued rights transferred in the regulation, the provision in the new public scheme must be in all material respects at least as good immediately after the regulations are made, as under the BBS or NRAM Pension Scheme (as appropriate) immediately before that time.

Clause 95(1) and (3) provides that, for money purchase benefits, other than pensions in payment, the value of any rights or entitlements under the new public scheme immediately after the transfer must be at least equivalent to the value of the qualifying accrued rights transferred. Qualifying accrued rights to money purchase pensions in payment will be protected under the requirements in Clause 95(1) and (3).

Subsections (4) and (5) provide that the Treasury may make regulations about the determination of rights and entitlements for the purposes of subsection (3), including specifying the person by whom the valuation may be made and the manner in which the valuation may be determined. The nature of this valuation will be set out in regulations, rather than on the face of the Bill, to allow the Government to consider the most appropriate person to conduct the valuation and methodology by which members' benefits will be valued.

Subsections (5)(b) and (6) enable the Treasury to make provision for the date or period in which the transferring rights are valued, which must be no more than 3 months before the date of transfer. As the precise date of the transfer is not yet known, it is impossible to put a definition of the "qualifying time" on the face of the Bill. Taking this power will allow the Treasury to specify a time for the transfer when it is known.

Clause 96: Protection against adverse treatment: amendments to new public schemes

Policy intent:

In order to protect the scheme members from adverse treatment resulting from future amendments to the new public schemes, certain restrictions will be placed on the ability of the Treasury to make amendments to the scheme rules.

The Treasury will not be permitted to make amendments to the rules of the new public schemes that would or might adversely affect subsisting rights unless: i) the Treasury has gained the consent of persons who are likely to be affected by the amendment, or their representatives; or ii) procedural requirements have been met.

For all other amendments, the Treasury will be required to consult with the persons likely to be affected by the amendment, or their representatives.

The intention is to provide members of the new public scheme and their survivors with the equivalent level of protection they currently enjoy under the Pensions Act 1995. This is the approach that was adopted in section 20(7) of the Postal Services Act 2011 that established a new public scheme for certain members of the Royal Mail Pension Plan.

Legal implementation:

Clause 96 (1)(a) provides that the Treasury may not make amendments to the new public schemes which would or may affect subsisting rights unless the consent requirements or procedure requirements have been met.

Clause 96(1)(b) provides that any other amendments to the new public schemes may only be made where the consultation requirements (i.e. requirements for the Treasury to consult with interested persons or their representatives) have been met.

Subsection (7) defines 'interested persons' as persons who appear to the Treasury to be likely to be affected by the amendment.

Subsections (2), (3) and (4) stipulate that the consent requirements, procedure requirements and consultation requirements will be set out in regulations made by the Treasury. The new public schemes will be in place for many years, and the requirements may need to be amended over the lifetime of the schemes. It is therefore proposed that those requirements should be set out in regulations, rather than on the face of the Bill.

Under Clause 100(3)(a), amendments that are subject to the consent requirements are subject to the affirmative procedure. Any amendments that have retrospective effect are also subject to the affirmative procedure.

Clause 97: Transfer of assets and liabilities

Policy intent:

Following the establishment of the schemes and members' accrued rights having been transferred to the new schemes, the assets of the BBS and NRAM schemes will not be needed to meet the beneficiaries' pension payments as the new schemes will operate on an unfunded basis. The liabilities will be met by the Exchequer. The Government considers this to be the most efficient and value for money way to meet these ongoing liabilities.

The assets and liabilities of the BBS and NRAM pension schemes will be transferred to a nominee of the Treasury, or a company established by the Treasury, who will hold the assets pending their disposal. Proceeds from asset disposals may be paid into the Consolidated Fund.

Legal implementation:

Clause 97(1) allows the Treasury to make regulations that transfer the assets and liabilities of the BBS Pension Scheme and the NRAM Pension Scheme to a nominee of the Treasury or a company established by the Treasury for the purpose of holding the assets or the liabilities pending their disposal.

Clause 97(2) provides that the assets and liabilities of the BBS Pension Scheme and the NRAM Pension Scheme may only be transferred to the Government after regulations have been made under Clause 93.

Clause 97(3) provides that regulations made under this Clause may include provision for payments to be made into the Consolidated Fund.

Clause 98: Transfer of other pensions and benefits

Policy intent:

A small number of pensions are paid to members of the BBS and NRAM pension schemes (or the survivors of members who have died) directly by B&B plc and NRAM Limited. The liability of these pensions will soon novate to UKAR (in October 2021) when B&B and NRAM return to private ownership. These pensions reside outside the formal BBS and NRAM schemes, and exist as a result of contractual agreements between the beneficiaries and their former employers (B&B plc and Northern Rock plc, as appropriate).

This power will allow those liabilities to be transferred from UKAR or its subsidiaries to the Treasury along with the formal schemes. This will ensure the long-term security of the pensions and ensure UKAR is wholly relieved of its responsibilities in relation to the pensions.

Legal implementation:

Clause 98(1) allows the Treasury to make regulations to transfer qualifying liabilities to pay a pension from B&B plc, NRAM Limited or UKAR to the Treasury. Subsection (2) defines a “qualifying liability” as pensions or other benefits received in connection with a person’s past service with Bradford & Bingley plc, Northern Rock plc or another entity, excluding liabilities arising under the BBS Pension Scheme or NRAM Pension Scheme. Other entities could include building societies that were taken over by B&B or Northern Rock prior to their nationalisation.

Some of the liabilities to pay pensions and other benefits may be within the meaning of occupational pension schemes under section 1(1) of the Pension Schemes Act 1993. Any such arrangement will remain an occupational pension scheme on transfer to the Treasury, but the application of the law may need to be amended as the liability has moved to the Treasury. Clause 98(3) and (4) allow the Treasury to make regulations to modify or disapply law that applies to occupational pension schemes.

Subsection (5) allows the Treasury to use regulations to provide that any liabilities transferred to be treated as a type of occupational pension scheme and to modify any relevant enactments which apply to such a scheme.

Clause 99: Taxation

Policy intent:

The establishment of the new public schemes and the transfer of qualifying accrued rights, and the transfer of the assets and liabilities of the current schemes, may result in tax liabilities being incurred for the BBS and NRAM pension schemes; the new public schemes;

the beneficiaries of those schemes; those with a qualifying liability under clause 98; UKAR; or the company established by the Treasury under Clause 97 to dispose of the assets of the BBS and NRAM pension schemes. As such, the government will modify the application of relevant tax law where appropriate, such that the transfer to the new arrangements will be tax neutral for the persons and bodies involved.

Where appropriate, those in scope will not incur a liability to pay tax that would not have otherwise arisen had the powers under this Part of the Bill not been exercised. These parties will continue to pay any tax they would otherwise have been liable for had these powers not been exercised. The intention is to prevent any adverse tax treatment arising as a result of the exercise of the powers taken in this Bill.

Legal implementation/outline of proposed content:

Clause 99 will enable the Treasury to modify relevant tax law such that those in scope of the Clause do not incur a liability to pay tax that would not have arisen had powers under Part 2 of the Bill not been exercised.

Clause 99(1) allows the Treasury to make regulations to vary the way in which relevant tax would apply to the new scheme; members of the new scheme; survivors of members of the new public scheme who have rights or entitlements under the scheme; or the company established to hold the assets of their BBS and NRAM pension schemes pending their disposal.

Clause 99(3) allows the Treasury to make regulations to vary the application of relevant tax in relation to BBS Pension Scheme; the NRAM Pension Scheme; members of those schemes or their survivors; UKAR; and persons in respect of whom there is a qualifying liability under Clause 98.

Clause 99(4) provides that regulations made under this Clause to vary the application of relevant tax can provide for: the disapplication of relevant tax; the modified application of tax; anything done to have or not to have a specified consequence for the purposes of a tax provision; the withdrawal of tax relief; or the charging of relevant tax.

As the transfer of the members' benefits will take place sometime after the Royal Assent of this Bill, these powers to vary tax law are being taken through statutory instrument rather than the necessary variations to tax law being placed on the face of the Bill. Providing for the relevant taxes to be disapplied by regulations will provide the Treasury with the ability to reflect any changes to tax legislation between the Assent of the Bill and the transfer to the new scheme.

The regulations may have retrospective effect, unless they charge a tax or withdraw a tax relief.

Clause 100: Information

Policy intent:

Establishing new public schemes will require information to be shared by those holding it in relation to the schemes, members and beneficiaries to allow Government to exercise functions in relation to the new arrangements. This information will likely include (but is not restricted to) the rules of the current schemes, and personal data about the beneficiaries.

This information will be necessary for the effective establishment and administration of the new public schemes, including the payment of individuals' pensions.

This Clause enables information to be shared between such persons and bodies as: the Trustees and administrator of the BBS and NRAM pension schemes; the Treasury; UK Asset Resolution; and parties performing functions in relation to the new schemes (such as a scheme administrator). The Bill will also provide the Treasury with the power to make regulations requiring such persons to provide the necessary information.

The sharing of this information between these parties will not constitute a breach of any existing restriction on its disclosure, such as an obligation of confidence. However, neither the clause nor any regulations made under it permit a contravention of the data protection legislation.

In order to ensure that the submission of this information, the Treasury will be permitted to enforce the sharing of personal information through a financial penalty if necessary. Affected parties will have the right to appeal against this penalty.

Legal implementation:

Clause 100 provides for the Treasury to make regulations to enable the necessary sharing of information to establish and administer the new public schemes, including requiring certain information to be submitted to the Treasury.

Subsections (1) and (2) provide that the Treasury can make regulations which require prescribed persons to disclose information to the Treasury which it reasonably requires for the purpose of making regulations under this Part, including: establishing or administering a new public scheme; transferring qualifying accrued rights; or administering arrangements under which a qualifying liability arises under Clause 98.

Subsection (3) enables the Treasury to specify in regulations the time, form and manner in which the information must be given. It also enables the Treasury to provide, in these regulations, for the imposition of a financial penalty upon a person who fails to submit the prescribed information without a reasonable excuse. The provision to set out enforcement measures is necessary to ensure compliance with the regulations requiring information to be provided. Regulations which specify the amount of the financial penalty will be subject to the affirmative procedure under clause 101(4)

These provisions will be set out in regulations, rather than on the face of the Bill, as this will enable the Treasury to fully consider and make detailed provision about the information which it reasonably requires. The provision of any enforcement mechanism will be specified in regulations so that the Treasury will be able to consider an appropriate level of penalty and a suitable appeals mechanism

Subsections (4) to (6) provide for information relating to the BBS or NRAM pension scheme or the new public schemes to be shared between the Treasury, UK Asset Resolution, the Trustees of the relevant scheme, and the administrator and other persons performing functions in relation to the relevant current scheme and new public schemes.

Subsections (7) and (8) also provide that information in relation to arrangements which are a qualifying liability under Clause 98 may be shared between the Treasury, UK Asset Resolution, and NRAM Limited or B&B plc as appropriate.

Subsection (9) provides that the disclosure of information under this Clause does not breach any restriction on the disclosure of the information, such as an obligation of confidence; however, neither the clause nor any regulations made under it permit a contravention of the data protection legislation

Clause 101: Regulations

Policy intent:

Before: i) the establishment of the new public schemes; ii) the transfer of accrued rights; and iii) the transfer of the assets and liabilities of the current schemes to the Treasury, the Treasury will consult with the Trustees of the BBS and NRAM pension scheme. The format and timing for this consultation will be set out and discussed with the Trustees in due course. This will ensure that the interests of the scheme members are properly represented during the drafting of the regulations.

Legal implementation/outline of proposed content:

Clause 101(1) provides that the Treasury must consult the relevant Trustees of the BBS or NRAM pension schemes (as appropriate) before making: i) regulations under Clause 93 which establish new public schemes or transfer qualifying accrued rights to the new schemes; or ii) regulations under Clause 97 which make provision for the transfer of assets and liabilities.

Subsections (3) and (4) provide that regulations made under this Part of the Bill are subject to the affirmative procedure if: i) they make provision for an amendment to the new public scheme rules that would or might adversely affect subsisting rights and are subject to the consent procedure; ii) they make an amendment to the scheme rules that would have retrospective effect; or iii) they make provision about the amount of a financial penalty for the purpose of exercising any power to require information.

Subsection (5) provides that regulations under Clause 99 that vary the way in which tax legislation would apply are subject to annulment in pursuance of a resolution of the House of Commons.

Subsection (6) provides that all other regulations made under this Part of the Bill are subject to the negative procedure.